

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

CARLOS ASHLEY, #351651 §  
VS. § CIVIL ACTION NO. 9:10cv133  
WARDEN OLIVER, ET AL. §

MEMORANDUM OPINION AND  
ORDER OF PARTIAL DISMISSAL

Plaintiff Carlos Ashley, a prisoner confined at the Eastham Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was transferred to the undersigned with the consent of the parties pursuant to 28 U.S.C. § 636(c).

On April 7, 2011, the Court conducted an evidentiary hearing in accordance with *Spears v. McCotter*, 766 F.2d 179, 182 (5th Cir. 1985), wherein the Plaintiff's various claims were considered. During the hearing, the Plaintiff testified that he included Nurse Hough and Dr. Fomby on the list of defendants because he wanted them included in the case as witnesses. Both of them had helped him. He did not intend to sue them. A plaintiff is entitled to voluntarily dismiss a case before the opposing party serves either an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1). The Defendants have not filed an answer or any other responsive pleading in the case. The oral motion to dismiss should be granted. It is therefore

**ORDERED** that the oral motion to dismiss be granted and that the claims against Nurse Hough and Dr. Fomby are **DISMISSED** without prejudice. Fed. R. Civ. P. 41(a)(1).

So **ORDERED** and **SIGNED** this **12** day of **May, 2011.**



JUDITH K. GUTHRIE  
UNITED STATES MAGISTRATE JUDGE